

Respondent requests review of “[w]hether claimant is entitled to additional medical treatment related to the original injury or whether there have been intervening accidents which aggravated or accelerated the original injury?”¹ Respondent contends claimant failed to sustain his burden of proof that his current need for medical treatment is causally related to his work-related injury of February 3, 1991.

Claimant argues the ALJ's Post-Award Medical Award should be affirmed.

The issues for the Board's review are:

(1) Is claimant's current need for medical treatment a direct and natural consequence of his work-related injury of February 3, 1991?

(2) Did claimant suffer an intervening injury or injuries which caused claimant's current need for medical treatment?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record, the stipulations of the parties, and having considered the parties' briefs, the Board makes the following findings of fact and conclusions of law:

Claimant sustained personal injury by accident to his left knee on February 3, 1991, while unloading grain. Respondent provided medical treatment. Claimant underwent multiple left knee surgeries by Drs. Milo Sloo and Gary Harbin, both orthopedic surgeons, in 1991 and 1992. Claimant was ultimately released from treatment by Dr. Harbin in July 1994.

In Dr. Harbin's chart entry dated February 1, 1993, the doctor opined that claimant “will inevitably require knee replacement at an earlier date.”²

Dr. Revis Lewis, a neurosurgeon, stated in his January 16, 1995 report:

The patient has residual symptoms secondary to multiple ligamentous injuries of the left knee including the cruciate and collateral ligaments. . . . In addition, provision should be made for the likelihood of future total knee surgery.³

¹ Application for Review at 1.

² S.H. Trans., Ex. B.

³ *Id.*, Ex. C at 2.

On January 18, 1996, claimant settled his claim leaving open his rights to future medical treatment and review and modification.

Claimant received no medical treatment for his left knee from 1994 through 1998. In 1998 claimant, while working at Great Plains Trucking, twisted his left knee when he fell backwards, causing swelling in the knee. Claimant returned to Dr. Harbin on March 5, 1998, and was diagnosed with traumatic aggravation of degenerative arthritis in the left knee. Conservative treatment was provided. Dr. Harbin testified the 1998 event probably permanently aggravated claimant's left knee and accelerated claimant's need for additional treatment.

Another post-award injury occurred in June 3, 2000, when claimant, while working for Union Pacific Railroad, was installing the back end on a train, stepped on a ballast, and fell. Claimant returned to Dr. Harbin with complaints of swelling, popping and catching. Claimant was again treated conservatively, including a series of Synvisc injections. Dr. Harbin testified the June 2000 injury caused an aggravation to claimant's left knee condition and probably accelerated the degenerative changes in claimant's left knee.

Claimant received no additional treatment for his left knee until he returned to Dr. Harbin on May 15, 2006, with complaints of medial pain, intermittent catching, and occasional giving out. Claimant told Dr. Harbin "[a] long day at work standing will bother him."⁴ On May 23, 2006, Dr. Harbin performed another left knee arthroscopy and removed a loose fragment. The surgery revealed significant tri-compartmental degenerative changes. In Dr. Harbin's June 28, 2006 chart entry, the doctor made reference to the 1991 injury and observed "[m]ost recent x-rays showed degenerative arthritis, most likely and consistent with the original injury."⁵

Dr. Harbin testified:

His original problem comes from the injury in '91. That really set the stage and made a knee replacement inevitable, and I think that's without question. The only thing you can say is sometimes the type of work a person does, impact activities and injuries, will accelerate it, but under good medical juris prudence [sic] or prediction, I cannot say at all how much. Is it going to make six months difference, all those injuries he's had, or is it going to require the need four, five, ten years earlier. That's absolutely not a medically predictable item, but any injury, any excessive walking will definitely accelerate and aggravate the condition, but I can't predict how much.

⁴ Harbin Depo., Ex. 2 at 13.

⁵ *Id.* at 15.

Q. So your opinion is still that these incidents we've talked about did permanently aggravate his condition; correct?

A. They have to. Any injury will aggravate the condition and accelerate the date and need for knee -- date of need for a knee replacement.

Q. The only thing you can't say is how much it accelerated the need?

A. Correct.⁶

On January 9, 2012, Dr. George Fluter, a board certified specialist in physical medicine and rehabilitation, reviewed claimant's medical records, took a history and performed a physical examination at the request of claimant's attorney. Dr. Fluter diagnosed: (1) status post work-related injury to the left knee on or about February 3, 1991, (2) internal derangement of the left knee, and (3) status post left knee surgeries in 1991, 1992, and 2006.

Dr. Fluter testified regarding causation:

Well, I felt that the causation, that there was a causal relationship between the injury that had occurred in 1991 and it's sequelae, and the reason is, obviously, based on the history leading to internal derangement and the need for several surgical procedures.

The condition of the knee progressed to a point where he was considered a candidate for a total knee replacement surgery. He had held off on doing the surgery for as long as possible, which is a standard recommendation for that condition, but at some point in time, the need for the surgery becomes obvious, and at that point, that's when the individual has the surgery, so I felt that everything from the injury that happened in 1991, and as a result of that injury and everything that stems from it, that it was related to that injury in 1991.⁷

In his narrative report dated January 9, 2012, Dr. Fluter concluded there was a causal/contributory relationship between claimant's current condition and his need for a total knee replacement and the original accident.

Dr. Fluter testified that physical activities such as climbing, squatting, kneeling, twisting, prolonged walking and walking over uneven terrain would aggravate or accelerate claimant's knee condition.

⁶ *Id.* at 17-18.

⁷ Fluter Depo. at 6-7.

PRINCIPLES OF LAW

K.S.A. 44-510(a) requires employers to provide such medical treatment as is reasonably necessary to cure and relieve the employee from the effects of the injury. The case law interpreting this language has consistently found that the statute contemplates the employer being responsible for all medically reasonable treatment which is designed to relieve the employee's symptoms, arising from the injury.⁸

In claimant's request for post-award medical treatment, he has the burden to prove his right to an award of compensation and prove the various conditions on which his right depends.⁹

In his Award of August 13, 2012, the ALJ made detailed findings of fact and conclusions of law that are accurate and supported by a preponderance of the credible evidence. It serves no purpose to repeat those findings and conclusions. The Board adopts the ALJ's findings and conclusions. Claimant has sustained his burden of proof that he is in need of medical treatment due to his original accidental injury. Such treatment shall be provided at respondent's expense. Claimant's need for medical treatment did not result from any intervening accident or injury.

All five members of the Board have considered the evidence and issues presented in this appeal. Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

CONCLUSION

(1) Claimant has sustained his burden of proof. His current need for medical treatment is the result of his February 3, 1991, work-related injury. Such treatment shall be provided by respondent.

(2) Claimant's current need for medical treatment is not the result of intervening accidents or injuries.

AWARD

WHEREFORE, the Board finds that the Post-Award Medical Award entered by Administrative Law Judge Bruce E. Moore dated August 13, 2012, is hereby affirmed in all respects.

⁸ See *Carr v. Unit No. 8169*, 237 Kan. 660, 703 P.2d 751 (1985); *Horn v. Elm Branch Coal Co.*, 141 Kan. 518, 41 P.2d 751 (1935).

⁹ K.S.A. 44-501(a).

IT IS SO ORDERED.

Dated this _____ day of December, 2012.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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